

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **January 27, 2004**

AGENDA ITEM NO.: 5

CONSENT: **X**

REGULAR:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Assignment of Aviation Technical Services lease to Falwell Aviation**

RECOMMENDATION: Approve an assignment of the current lease for the aircraft maintenance hangar facility at Lynchburg Regional Airport from Aviation Technical Services (ATS) to Falwell Aviation; authorize Falwell to conduct FAR Part 135 aircraft charter and flight school services at Lynchburg Regional Airport under that lease; and, authorize the City Manager to execute the assignment on behalf of the City.

SUMMARY: On February 12, 2002, City Council approved a five (5) year lease agreement with Britannia Aviation Services to operate the aircraft maintenance hangar facility (AP 212, Hangars #7 and #8) at Lynchburg Regional Airport. Since the execution of the lease effective April 1, 2002, and throughout the subsequent certification process as an FAA-approved Repair Station, the facility has operated as Aviation Technical Services. On September 23, 2003, City Council approved an assignment of the Britannia lease to Aviation Technical Services, which was subsequently executed and formally assigned to ATS on November 26, 2003.

On January 9, 2004, a letter from ATS was delivered to the offices of the airport manager indicating that ATS had been in negotiations with Falwell Aviation regarding the ATS lease of AP 212, Hangars #7 and #8, and that ATS would like to assign its current lease to Falwell Aviation. Falwell Aviation has been a sub-tenant of ATS for approximately 18 months, utilizing one of the facility's two hangars for the storage of jet and turbo-prop aircraft used in its aircraft charter and aircraft management service. Following approval of this assignment to Falwell Aviation, ATS has expressed its intention to continue to operate from the facility as an FAA certified repair station under a sub-lease agreement with Falwell Aviation.

On April 13, 2001, Falwell was granted an Airport Business License to operate as an FAR Part 135 aircraft charter service at Lynchburg Regional Airport, and since that time has grown to operate four executive jet aircraft and one turbo-prop. Earlier, on April 2, 2001, Falwell was also granted a license to operate a Flight School (although they do not currently exercise the authority at this airport).

There is no statutory requirement for a public hearing prior to the assignment of a lease of City property.

PRIOR ACTION(S): February 12, 2002 – Britannia Lease approved.
September 23, 2003 – Council approved assignment of lease from Britannia to ATS.

FISCAL IMPACT: None. All general terms and conditions of the existing lease will remain in force.

CONTACT(S): Mark F. Courtney 582-1150 extension 222 Airport Manager

ATTACHMENT(S): ATS to Falwell Aviation Lease Assignment

REVIEWED BY: lkp

RESOLUTION

BE IT RESOLVED That the Lynchburg City Council approves an assignment of the lease by and between the City of Lynchburg and Britannia Aviation Services dated April 1, 2002, and as assigned to ATS on November 26, 2003, to Falwell Aviation to operate the aircraft maintenance facility (AP212, Hangars #7 and #8) for approved aeronautical services at Lynchburg Regional Airport; and,

BE IT RESOLVED That the Britannia Aviation Services Lease dated April 1, 2002, and as assigned to Falwell Aviation, shall be modified to permit Aircraft Charter (FAR Part 135 Air Carrier) and Flight School services; and,

BE IT FURTHER RESOLVED That the City Manager is authorized to execute the lease assignment.

Adopted:

Certified:

Clerk of Council

009L

ASSIGNMENT OF AIRCRAFT AND OFFICE LEASE
AP 212, HANGARS #7 AND #8

THIS ASSIGNMENT OF AIRCRAFT AND OFFICE LEASE made and entered into on this ____ day of January, 2004, by and between the **CITY OF LYNCHBURG**, a municipal corporation of the Commonwealth of Virginia (the "City"); **AVIATION TECHNICAL SERVICES**, a Virginia corporation ("ATS"); and, **FALWELL AVIATION, INC.**, a Virginia Corporation ("Falwell").

WITNESSETH:

WHEREAS, the City owns and operates a public facility known as the Lynchburg Regional Airport, located in Campbell County, Virginia (the "Airport"), together with certain structures and improvements thereon; and

WHEREAS, the City and Britannia Aviation Resources, Inc., a Virginia Corporation ("Britannia") entered into a Lease Agreement dated April 1, 2002 (the "Lease Agreement"), wherein Britannia was granted a lease from the City of certain airport maintenance hangar facilities known as AP 212, Hangars #7 and #8 (the "Hangars") for the purpose of providing aeronautical services at the Airport; and

WHEREAS, by an Assignment of Aircraft and Office Lease dated November 26, 2003, the April 1, 2002 Lease Agreement was assigned from Britannia Aviation Services, Inc. to ATS; and

WHEREAS, ATS desires to assign the April 1, 2002 Lease Agreement and the November 26, 2003 Assignment of Aircraft and Office Lease to Falwell and Falwell desires to accept such assignment and to the lease the Hangars for the purpose of providing aeronautical services at the Airport, and is willing to perform all of the terms and conditions contained in the April 1, 2002 Lease Agreement and the November 26, 2003 Assignment of Aircraft and Office Lease; and

WHEREAS, the City consents to the assignment of the April 1, 2002 Lease Agreement and the November 26, 2003 Assignment of Aircraft and Office Lease to Falwell, subject to the terms and

conditions contained in this Assignment of Aircraft and Office Lease and subject to the terms and conditions contained in the April 1, 2002 Lease Agreement and the November 26, 2003 Assignment of Aircraft and Office Lease.

NOW, THEREFORE, WITNESSETH: For and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, and other valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual promises and covenants hereinafter contained, the parties hereto mutually agree as follows, to wit:

SECTION 1 – ASSIGNMENT OF LEASE AGREEMENT

For value received, ATS does hereby assign and transfer to Falwell all of its right, title and interest to the Lease Agreement dated April 1, 2002, between the City and Britannia and all of its right, title and interest to the Assignment of Aircraft and Office Lease dated November 26, 2003, between the City and ATS, which Lease Agreement and Assignment of Aircraft and Office Lease, by this reference, are incorporated herein and made a part hereof.

SECTION 2 – ACCEPTANCE OF ASSIGNMENT

For value received, Falwell hereby accepts the assignment of the Lease Agreement and the assignment of the Aircraft and Office Lease from ATS and, in consideration of the consent of the City to the assignment, agrees that it will be bound by and will perform all of the terms and conditions set forth in the April 1, 2002 Lease Agreement and the November 26, 2003 Assignment of Aircraft and Office Lease.

SECTION 3 – CONSENT BY THE CITY

Pursuant to ARTICLE XIII - ASSIGNMENT OR TRANSFER OF AGREEMENT of the April 1, 2002 Lease Agreement, the City hereby consents to the assignment of the Lease Agreement and the Assignment of Aircraft and Office Lease to Falwell for the lease of the Hangars for the purpose of providing aeronautical services at the Airport. It is expressly agreed and understood

that the consent to the assignment shall not be construed as a waiver by the City of the right to enforce all of the terms and conditions set forth in the Lease Agreement and in the Assignment of Aircraft and Office Lease. Furthermore, it is expressly agreed and understood that all the terms and conditions set forth in the Lease Agreement and in the Assignment of Aircraft and Office Lease shall remain in full force and effect.

The City hereby releases ATS from any and all liability under the Lease Agreement and the Assignment of Aircraft and Office Lease for acts or omissions following the date hereof, however, Britannia and ATS remain bound by ARTICLE VI – INDEMNIFICATION and ARTICLE VII – INSURANCE of the April 1, 2002 Lease Agreement with respect to all acts or omissions occurring on or before the effective date of this assignment.

SECTION 4 – SCOPE OF SERVICES AND TERMS AND CONDITIONS

Article III, Scope of Services, of the April 1, 2002 Lease agreement is hereby modified to permit Aircraft Charter (FAR Part 135 Air Carrier), Flight School and/or other aeronautical services as permitted and approved under the Airport's Minimum Standards for Aeronautical Services or Activities. All other terms and conditions as set forth in the April 1, 2002 Lease Agreement and all of the terms and conditions set forth in the November 26, 2003 Assignment of Aircraft and Office Lease remain in full force and effect and shall apply to this Assignment of Aircraft and Office Lease.

SECTION 5 – NOTICES

Any notices to be provided by the City to Falwell will be addressed to Falwell Aviation, Inc., attn. W. Calvin Falwell, President, 4332 Richmond Highway, Lynchburg, VA 24501. All other terms and conditions of ARTICLE XIV -NOTICES of the Lease Agreement remain the same.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Aircraft and Office Lease to be executed by their duly authorized officers and their respective seals to be here unto affixed as of the day and year first above written.

CITY OF LYNCHBURG

By: _____
City Manager

(SEAL)

ATTEST: _____
Clerk of Council

AVIATION TECHNICAL SERVICES, INC.

By: _____
Paul J. Marten, President and CEO

(SEAL)

ATTEST: _____

FALWELL AVIATION, INC.

By: _____
W. Calvin Falwell, President

(SEAL)

ATTEST: _____